

## REMARKS

Claims 1-36 and 57-59 are pending. Claims 37-55 and 60-131 were canceled without prejudice or disclaimer by preliminary amendment. Claim 14 is amended and claim 56 is canceled without prejudice or disclaimer. The amendment to claim 14 is fully supported by the disclosure of claim 14, as originally filed.

Applicants elect Group I, with traverse, for prosecution on the merits in this application. Applicants reserve the right to prosecute non-elected subject matter in a further patent application.

Reconsideration of the restriction requirement under 35 U.S.C. 121 is requested.

Applicants urge that the Examiner has misinterpreted the relationship between claim 1 and claim 14. Contrary to the Examiner's argument, the method of claim 14 can not be carried out without carrying out the method of claim 1 as evidenced by the fact that claim 14 (the only independent claim in Group II) can be rewritten as dependent on claim 1 (Group I) without changing the scope of original claim 14. Therefore, Applicants have amended claim 14 to make it dependent on claim 1. The basis of the restriction requirement as between Groups I and II is rendered moot by the amendment.

Applicants respectfully submit that the "restriction" requirement as between Groups I and III is improper and should be withdrawn.

The Examiner acknowledges the relationship between the methods of Group I and the kits of Group III. The Examiner, however, argues that the method of Group I can be performed with different reagents from those claimed in Group III. Applicants should still be entitled to have these claims examined together. Claim 1 (Group I) is directed to a method comprising "contacting said sample with an extraction reagent comprising nitrous acid." See claim 1, step (a). This limitation is a special technical feature of the invention of claim 1. Claim 25 (Group III) is directed to a kit comprising "(a) an acid; (b) a nitrite salt" which when intermixed form nitrous acid – the same special technical feature as recited in claim 1.

In view of the relationship between Groups I and III, which was acknowledged by the Examiner, Applicants maintain that examination of Group III along with elected Group I would not impose an undue burden on the Examiner. In particular, a search for

art related to the subject matter of Group I would necessarily reveal art related to the subject matter of Group III, and vice versa. When the Examiner searches the art for the extraction methods, he will necessarily need to search for the extraction reagent compositions, as a component of the kit is explicitly recited in the method of claim 1. Accordingly, to require the filing of a separate divisional application directed to Group III would result in the very same search of the art being repeated. Such duplication of effort would be inefficient to the operation of the Patent and Trademark Office. Furthermore, it is likely that the same examiner would be in charge of the divisional application, but since the divisional application would be examined at a later date, the examiner would have to conduct a duplicate, redundant search of art for the divisional application. Moreover, as a result of the GATT legislation limiting the term of a patent to twenty years from its effective filing date, the delay in the examination of the non-elected claims likely would result in the patent term for these claims being unnecessarily shortened.

Therefore, since the outcome of the present restriction requirement would be to delay the examination of the claims of Group III, resulting in inefficiencies and unnecessary expenditures by Applicants, and since a single search can be performed (and will be performed) for all the subject matter defined by the claims in Groups I and III without any significant burden on the Patent Office, Applicants respectfully request reconsideration and withdrawal of the restriction requirement so that the claims of Groups I and III will be examined on the merits together in the instant application.

Claim 56 (Group IV) is canceled without prejudice or disclaimer to its prosecution in a further application.

In response to the requirement for an election of species of 37 CFR 1.141, Applicants respectfully elect the following species for prosecution on the merits:

- a) Viruses of claim 5 read on claims 1-24 and 57-59;
- b) Protein marker of claim 16 read on claims 1-24 and 57-59;
- c) Influenza type A, B or C virus of claim 17 read on claims 1-24 and 57-59;
- d) A marker of influenza A of claim 18 read on claims 1-24 and 57-59;
- e) Viruses of claim 30 read on claims 1-24 and 57-59;
- f) Protein marker of claim 31 read on claims 1-24 and 57-59;

- g) Claim 56 is canceled;
- h) Protein marker of claim 58 read on claims 1-24 and 57-59; and
- i) Viral marker of claim 59 read on claims 1-24 and 57-59.

Selection of species applies to all generic species specifically identified by the Examiner, e.g., claims 5, 14, 25 and 58-59.

Applicants expressly reserve the right under 37 CFR 1.141 to rejoin non-elected species, if any of the generic claims is found allowable.

Applicants earnestly solicit an early and favorable examination on the merits. The Examiner is invited to contact the undersigned if any further information is required.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By:

Gary R. Tanigawa  
Reg. No. 43,180

1100 North Glebe Road, 8th Floor  
Arlington, VA 22201-4714  
Telephone: (703) 816-4000  
Facsimile: (703) 816-4100